vss

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.386 OF 2007

Baby Shankar Pange ... Appellant

V/s.

The State of Maharashtra ... Respondent

Mr.Vijay Hirennath for Appellant
Dr.F.R. Shaikh, APP, for Respondent

CORAM: **D.G. DESHPANDE &**
SMT.NISHITA MHATRE, JJ.

DATED: **APRIL 24, 2007**

P.C.:

. Heard the advocates. This matter is for admission. But the learned advocate for the appellant contended that it would take five minutes to dispose of the appeal on merits. Therefore, by consent, we heard the appeal on merits. The accused who is a female is convicted under section 302 of the Indian Penal Code and sentenced to life. It is this aspect that is challenged by the appellant on the ground that even though the case of the prosecution may be true that the accused inflicted the blow stomach with a sickle. There is absolutely no evidence on record much less the medical evidence to show that the injury was sufficient to cause death in ordinary course of nature or it could have endangered the life of the victim who was a close relative of the accused. A copy of the medical certificate is produced before us which indicates only

one stab injury on the stomach. No opinion on that regarding the nature and gravity of the injury. It has come on record that she was suffering from frustration because she has lost her parents and she had no roof over her head.

2. A crucial aspect of an offence under section 307 of IPC is that it should be an attempt to murder and for bringing the case under the definition of murder as to cause death in ordinary course of nature, he should be having intention and knowledge in causing the injury. Both the aspects are absent. There is no record to show that the victim was hospitalised for more than 21 days. Therefore, for all these grounds, the conviction of the accused under section 307 IPC cannot be maintained. However, the conviction has to be converted to section 326 of the Indian Penal Code and looking to the age and the circumstances and the background, the nature of the injury, etc, in our opinion, the sentence already undergone which is from 26.11.2004 till this date would be sufficient in the interest of justice. Therefore, we pass the following order:

i) The appeal is partly allowed.

ii) The conviction of the accused under section 307 of the Indian Penal Code and sentence imposed upon him is set aside. She is instead

convicted under section 326 of the IPC.

iii) The sentence already undergone would be sufficient. She should be set free forthwith, if not required in any other case.

3. Appeal is disposed of accordingly.

(D.G. DESHPANDE, J.)

(SMT.NISHITA MHATRE, J.)